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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION******APPEAL No. 214 OF 2016******IN******ARBITRATION PETITION No. 1196 OF 2014******WITH******NOTICE OF MOTION No. 1428 OF 2016******IN******APPEAL No. 214 OF 2016******WITH******NOTICE OF MOTION (L) No. 3229 OF 2015******IN******APPEAL No. 214 OF 2016******M/s. Sourabh Cotton Co.******...Appellants******Vs.******M/s. Vijay Cotton and Fibre Company******...Respondents**************

Niranjan P. Shimpi for the Appellants

Mr. Simil Purohit a/w. Faran Khan for Respondents

**************CORAM : V. M. KANADE &******Mrs. SWAPNA S. JOSHI, JJ******DATE : SEPTEMBER 28, 2016*****P.C. :**

1. Heard Shri Shimpi, learned counsel appearing on behalf of the Appellants and Shri Purohit, learned counsel appearing on behalf of the Respondents.

2. The Appellants are aggrieved by an order passed by the Learned Single Judge dated 24.8.2015, dismissing the Arbitration Petition filed by them under section 34 of the Arbitration and Conciliation Act, 1996.

3. The Appellants and the Respondents had entered into an agreement dated 2nd August, 2010. The agreement states that the Appellants had purchased cotton from the Respondents. The particulars of transaction were mentioned in the purchase contract. The contract also mentions that the contract was subject to the Bye-laws of the Cotton Association of India.

4. There was some dispute regarding the payment of money to the Respondents and, therefore, they sent notices to the Appellants which were not accepted by them and, thereafter, arbitration proceedings were initiated by the Sole Arbitrator, who was appointed by the Cotton Association of India at the instance of the Respondents. The Appellants did not participate in the arbitration proceedings and an Award was passed by the Arbitrator. Execution proceedings were taken out and copy of the execution application was served upon the Appellants and, thereafter the Appellants filed arbitration petition under section 34 of the Arbitration and Conciliation Act. In the Arbitration Petition in paragraph 8, the Petitioners -Appellants herein contended and made a

specific averment that they were carrying on business from M/s. Narendra Industries for the period from 8th September, 2010 to 9th December, 2011 and, thereafter, they shifted from the said office and started residing at Akola, Maharashtra. It is contended that they never received any communication from the Respondents at the old address and were served with the execution application in the year 2014 at the present address. It was contended that the Respondents were aware about the change of address and in spite of that all the notices were served at the old address.

5. The Learned Single Judge, however, did not accept the contention of the Appellants and dismissed their Arbitration Petition.

6. Being aggrieved by the said order, the Appellants have approached this Court by filing an appeal.

7. Shri Shimpi, learned counsel appearing on behalf of the Appellants, firstly has invited our attention to the purchase contract. He submitted that the said contract clearly mentions that the Bye-laws of Cotton Association of India are duly binding on the parties. He further invited our attention to the Rules and Regulations of the Arbitration, which are framed by the Cotton Association of India. He submitted that the said Rules clearly state that an arbitration clause has to be

mentioned in the contract. He submitted that there was no such arbitration clause in the said agreement and therefore, there being no arbitration clause in the agreement and the Arbitrator did not have a jurisdiction to decide the issue. Secondly, it was submitted that the Appellants had changed their address and were residing at the new address and, therefore, no communication was received by them.

8. On the other hand, Shri Purohit, learned counsel appearing on behalf of the Respondents submitted that the plea of jurisdiction was never raised by the Appellants before the Learned Single Judge. Secondly it was submitted that the Appellants have not raised this issue before the Arbitrator by filing an application under section 16 and thus they are deemed to have waived the objection as per the provisions of section 4 of the Arbitration and Conciliation Act, 1996. He also submitted that no ground challenging the jurisdiction has been raised in the petition filed under section 34 of the Arbitration and Conciliation Act, 1996 and, therefore, it is not now open for the Appellants to raise this issue for the first time in an appeal filed under section 37 of the Arbitration and Conciliation Act, 1996. So far as the question of service of notices is concerned, he submitted that the arbitration proceedings are over on 11th August, 2011 and in the arbitration petition filed under section 34 of the Arbitration and Conciliation Act, 1996,

there is a specific averment that they had shifted from that old address to a new address at Akola, Maharashtra as alleged in any events after December, 2011 and, therefore, it is not now open for them to say that they had shifted from the address and there was no communication was received to the Appellants. He invited our attention to the notices which were sent by the CCI to the Appellants herein at the old address. He submitted that on these notices, the remark given by the Postal Department was "Refused". He submitted that it is now not open for the Appellants to contend that the Appellants have not received any letters.

9. After having heard both the counsel at length, we are of the view that there is no substance in the submissions made by the learned counsel appearing on behalf of the Respondents. So far as the issue regarding service of notices is concerned, their own averment made in paragraph 8 of the Arbitration Petition reveals that they were carrying on business at the said address till December, 2011, therefore, it is not now open for the Appellants to raise this issue about changing of their address. Secondly, the notices which were sent, reveal that they had refused to accept the service. The Appellant were not diligent in appearing before the Arbitrator though they were served. It is a settled position in law that 'Refusal' is good service. The Appellants

did not raise the issue of jurisdiction which they could not do so under section 16 of the said Act. The issue of jurisdiction was not even raised in section 34 petition as is now sought to be contended. We are of the view that this issue cannot be raised for the first time in the appeal.

10. This Court had given an opportunity to deposit the decretal amount in this Court. However, that order has also not been complied with despite several opportunities being given to them.

11. The Learned Single Judge has considered all the material on record and has given cogent reasons as to why he did not accept the contention of the Appellants regarding non-service of the notices. We find that there a deliberate attempt was made by the Appellants to protract the proceedings either by taking false plea or by not remaining present before the Arbitrator. The party who has deliberately avoided to appear before the Arbitral Tribunal can do so at their own risks and consequences. We are of the view that, therefore, false defences and false pleas which were raised only to protract the litigation should not be encouraged. We are, therefore, not inclined to interfere with the order passed by the Learned Single Judge and even otherwise the scope of interfering with the order passed in the arbitration petition under section 34 is limited.

12. Hence, the appeal is dismissed. Notices of motion filed by the Appellants do not survive and are accordingly disposed of.

13. The amount deposited by the Appellants in this Court is permitted to be withdrawn by the Respondents with accrued interest, if any.

Mrs. SWAPNA S. JOSHI, J.

V.M. KANADE, J.